



VOLUME: I

CONFIDENTIAL TRANSCRIPT  
UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

MDL NO. 1456

Civil Action No. 01-CV-12257-PBS

Judge Patti B. Saris

IN RE: )  
PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE )  
LITIGATION )  
 )  
 )  
THIS DOCUMENT RELATES TO )  
ALL CLASS ACTIONS )

DEPOSITION OF MICHAEL C. WALSH,  
called as a witness on behalf of the  
Plaintiffs, pursuant to the applicable  
provisions of the Federal Rules of Civil

1 version and we wanted to optimize our  
2 market share within CVS, or whatever, so  
3 we might or we would offer them a market  
4 share program to increase their share of  
5 that product category within CVS.

6 As they increased share, they were  
7 entitled to certain rebates. I believe  
8 all the rebates were from the Warrick side,  
9 not Schering side.

10 Q. So, if I understand your testimony, there  
11 would be -- the incentive for increased  
12 sales of Proventil would perhaps result in  
13 a rebate that would come from Warrick?

14 A. I believe if you increased your market  
15 share, not necessarily sales, if you  
16 increased your market share of the categories  
17 you were entitled to rebates, it did not  
18 involve price, at least on the branded  
19 side.

20 Q. Getting back to the side of AWP by your  
21 accounts, and particularly I'm referring  
22 to the chain drugstores, is it not your

1 understanding that AWP is used by your  
2 accounts, your chain drugstores, for  
3 reimbursement purposes?

4 A. It's my understanding they, yes, they do  
5 that.

6 Q. And what is your understanding, who were  
7 they getting reimbursement from?

8 A. I'm not an expert in managed care, but  
9 managed care, Schering-Plough negotiates  
10 with managed care based on the number of  
11 lives that a particular account is, has,  
12 and they, the managed care organization,  
13 reimburses a chain at a certain level of  
14 reimbursement. And whether they do that  
15 off of AWP or not, I suppose they do, but  
16 I don't really know that.

17 Q. In marketing, any of your experience in  
18 marketing drugs to your accounts, have you  
19 ever used as a selling point, a marketing  
20 point, the spread between an invoice price  
21 and AWP?

22 A. Absolutely not.

1 Q. Have you ever heard of anybody in

2 Schering-Plough doing that?

3 A. No, not on any branded product.

4 Q. On non-branded products, have you heard of

5 anybody doing that?

6 A. I don't know what the non-branded people do.

7 Q. On a generic product, have you heard of

8 anybody doing, marketing the spread to move

9 inventory or to increase sales?

10 A. I don't know. I don't have any knowledge

11 of that at all.

12 Q. You've been with Schering-Plough since

13 1970?

14 A. Yes.

15 Q. Have you ever heard of an instance where

16 someone was marketing the spread as we've

17 discussed it, the difference between an

18 invoice price and AWP? Have you ever heard

19 of anybody marketing the spread at

20 Schering-Plough?

21 A. I'm not aware of anyone marketing the spread

22 on any branded product at Schering-Plough.

1 Q. Have you ever been instructed by a  
2 supervisor, a superior at any of your  
3 positions that marketing the spread was  
4 not to be done?

5 A. We were told not to talk about AWP, period.

6 Q. When were you told that?

7 A. I don't know exactly. The last five years  
8 perhaps.

9 Q. Who told you not to talk about AWP?

10 A. I believe it would have been Mr. DiLascia.

11 Q. Did he offer a reason as to why you were  
12 not to speak of AWP?

13 A. I don't recall the actual reasoning  
14 behind it, just that there was a lot of  
15 misunderstanding as to what AWP was,  
16 therefore, just don't get into discussions  
17 about it.

18 Q. And when you say "misunderstanding," who  
19 was having the misunderstanding?

20 A. Well, pricing groups were having a  
21 misunderstanding. I guess Schering was  
22 having a misunderstanding also. We would

1 A. Not formal presentations.

2 Q. Have you had informal presentations?

3 A. Right.

4 Q. And that would be -- what would your  
5 presentation regarding Clarinex be with  
6 your accounts?

7 A. It would depend on at any particular point  
8 in time. Clarinex was the new version of  
9 Claritin, which had gone over-the-counter,  
10 Claritin had gone over-the-counter, and we  
11 were trying to convert as much of the  
12 prescription business for Claritin over  
13 to Clarinex. That was probably the main  
14 thrust of our presentation on Clarinex.

15 Q. And also, I believe you had competition in  
16 the form of Allegra and Zyrtec; is that  
17 correct?

18 A. That's right.

19 Q. And did you incorporate her suggestions  
20 regarding comparing AWP pricing into your  
21 Clarinex presentations?

22 A. We never talk about AWP. There's no reason

1 to.

2 Q. Did you talk to Ms. Judith Dane after you  
3 received this communication which is  
4 Exhibit Walsh 017, and tell her that you did not  
5 communicate or talk about AWP?

6 MR. KAUFMAN: Objection. You may  
7 answer.

8 A. I don't recall talking to her about it.

9 Q. Is that something you would have done,  
10 receiving a communication like Exhibit Walsh 017  
11 where she is suggesting that you discuss  
12 AWP with your accounts?

13 MR. KAUFMAN: Objection. You may  
14 answer.

15 A. I would never discuss it. It wouldn't be  
16 an option. I just wouldn't discuss it. I  
17 would discuss differences in price, direct  
18 selling price, but I have no reason to ever  
19 bring up AWP.

20 Q. Is it your testimony that you have never  
21 discussed AWP pricing with any of your  
22 accounts?



1 MR. KAUFMAN: Objection. He's  
2 already testified differently than your  
3 question assumes. You may answer.

4 **A. I have never proactively brought up AWP**  
5 **as a selling point.**

6 MR. KAUFMAN: Mr. McNeely, I note  
7 this is an incomplete document. It's missing  
8 a page. 77575 is followed by 77577.

9 MR. MCNEELY: It may have something  
10 to do with if you look at 7575, it talks  
11 about an image that cannot be produced or  
12 created, so I don't know if there was -- if  
13 that would explain it. But no, there's no  
14 intentionally leaving any part of this  
15 document out.

16 MR. KAUFMAN: Okay.

17 MR. MCNEELY: So I don't know if  
18 that meant that there was another blank page,  
19 but there's nothing intentional, and the  
20 answer is I can't explain it.

21 MR. KAUFMAN: Okay.

22

1                   (Exhibit Walsh 018 marked for  
2     identification.)

3

4 Q.   Mr. Walsh, you've been handed Exhibit  
5     Walsh 017.   Would you please review  
6     that and I will -- I'm sorry.   Exhibit Walsh 018.

7 A.   (Witness examines document)   Yes.

8 Q.   Can you identify that document?

9 A.   The latter part here came from Jerry  
10    Rebel, who I'm not sure of his exact title,  
11    but VP of finance for CVS Corporation,  
12    responding to Schering-Plough's proposal  
13    for a settlement on deductions, and we  
14    made a proposal and then they made a  
15    counterproposal.

16 Q.   This involves CVS?

17 A.   Right.

18 Q.   And that was one of your accounts?

19 A.   Yes.

20 Q.   Do you know how, when we talk about proposals  
21    and counter-proposals, this involves --

22 A.   Two credit departments.